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**IN THE
COURT OF APPEALS OF INDIANA**

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No. 49A02-0609-CR-811

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable William Nelson, Judge
Cause No. 49F07-0604-CM-061027

April 10, 2008

MEMORANDUM DECISION – NOT FOR PUBLICATION

BAKER, Chief Judge

Appellant-defendant Terrence Chaney appeals following his convictions for Resisting Law Enforcement,¹ a class A misdemeanor, Battery on a Law Enforcement Officer,² a class A misdemeanor, Possession of Marijuana,³ a class A misdemeanor, Disorderly Conduct,⁴ a class B misdemeanor, and Public Intoxication,⁵ a class B misdemeanor, challenging the sufficiency of the evidence. Finding no error, we affirm.

FACTS

On March 12, 2006, Chaney parked his vehicle directly in front of the entrance to a Wal-Mart in Marion County. He left the engine running, exited from the truck, opened the doors, and played loud music on the vehicle's sound system. Then, shouting "[l]et's party," Chaney danced on the pavement in front of the truck. Tr. p. 5. He walked toward a customer who was next to the store entrance, grabbed her arm, and said, "[l]et's party." Id. She pulled away and he ran into the store.

Inside the store, Chaney grabbed an employee's arm and said, "[l]et's party." Id. at 6, 17. Off-duty Lawrence Police Officer Brian Sharp, who was inside the store and had been alerted to the disturbance by radio, arrived to see a small crowd of onlookers around Chaney, who was shouting obscenities and unintelligible words "at the top of his voice." Id. at 6, 17-18, 22. The employee pulled her arm away and Officer Sharp

¹ Ind. Code § 35-44-3-3(a)(1).

² Ind. Code § 35-42-2-1.

³ Ind. Code § 35-48-4-11.

⁴ Ind. Code § 35-45-1-3.

⁵ Ind. Code § 7.1-5-1-3.

approached Chaney, who was still shouting. The officer was wearing his uniform and identified himself as a police officer to Chaney.

As Officer Sharp approached Chaney, an Indianapolis Metropolitan Police Department (IMPD) officer in civilian clothes showed his badge to Officer Sharp and said he would provide assistance if needed. Officer Sharp observed that Chaney's "clothing was sloppy. He had bloodshot eyes. He was sweating profusely and again he had white residue at the corners of his mouth and [was] yelling." Id. at 40.

Officer Sharp instructed Chaney to put his hands on a podium near the jewelry counter so that the officer could conduct a pat-down search for officer safety. Chaney began to walk away, and Officer Sharp informed Chaney that he would be arrested if he did not return and comply with the instructions. As Chaney walked away, Officer Sharp smelled the odor of an alcoholic beverage.

Chaney continued to ignore Officer Sharp and walk away. Officer Sharp approached Chaney from behind and put his hand on Chaney's wrist, but Chaney pulled free and continued walking away even after Officer Sharp told him he was under arrest. The officer again moved to stop Chaney, who proceeded to hit Officer Sharp in the face multiple times. Chaney moved into a fighting stance, with both hands clenched and raised.

Officer Sharp, now joined by the IMPD officer, continued to try to apprehend Chaney. At one point, Chaney tackled Officer Sharp and knocked both officers to the floor. Officer Sharp sprayed mace on Chaney, who was kicking and struggling. Finally, store patrons held Chaney's legs while Officer Sharp fought to handcuff Chaney.

Even after Officer Sharp instructed him to be quiet, Chaney continued to shout unintelligibly as the officers removed him from the store. They summoned an ambulance and performed a pat-down search of Chaney's clothing. Inside his coat, they found a baggie with a brown and green leafy substance. Officer Sharp's training and experience and a chemical field test confirmed that the plant matter was marijuana.

On April 9, 2006, the State charged Chaney with class A misdemeanor interfering with law enforcement, class A misdemeanor battery on a law enforcement officer, class A misdemeanor possession of marijuana, class A misdemeanor battery, class B misdemeanor disorderly conduct, and class B misdemeanor public intoxication. During the July 20, 2007, bench trial, the trial court dismissed the battery charge. On August 24, 2007, the trial court found Chaney guilty of the remaining charges and sentenced him to one year for each of the class A misdemeanor convictions and to six months for each of the class B misdemeanor convictions, to be served concurrently, and suspended all but forty-two days of each sentence to match the amount of time during which Chaney had been incarcerated before the trial court had released him on his own recognizance. Chaney now appeals.

DISCUSSION AND DECISION

Chaney challenges the sufficiency of the evidence supporting each of his convictions. When addressing sufficiency of the evidence challenges, we neither reweigh the evidence nor judge the credibility of the witnesses. McHenry v. State, 820 N.E.2d 124, 126 (Ind. 2005). We consider only the probative evidence and reasonable inferences therefrom that support the verdict. Drane v. State, 867 N.E.2d 144, 146 (Ind. 2007). If

there is conflicting evidence, we consider that evidence only in the light most favorable to the judgment. Id. The evidence is sufficient if an inference may reasonably be drawn from it to support the judgment. Id. at 147.

I. Possession of Marijuana

To convict Chaney of possession of marijuana, the State was required to prove beyond a reasonable doubt that he knowingly or intentionally possessed marijuana. I.C. § 35-48-4-11. Chaney argues that the State failed to prove that the green leafy substance found in his coat was marijuana because it did not offer evidence that Officer Sharp's observations and field test were confirmed in a laboratory setting.

Officer Sharp testified that he was trained to identify harvested marijuana by odor and sight. Using this experience, the officer identified the green leafy substance as marijuana. Officer Sharp further testified that he was trained to perform a chemical field test that would positively determine whether the substance was marijuana. Here, the officer performed such a field test, which confirmed that the green leafy substance in Chaney's possession was, in fact, marijuana. Officer Sharp's experience, training, and personal observations provide sufficient evidence to support Chaney's conviction on this count. See Vasquez v. State, 741 N.E.2d 1214, 1216 (Ind. 2001) (holding that the opinion of someone sufficiently experienced with a drug may establish its identity, as may other circumstantial evidence).

II. Resisting Law Enforcement

To convict Chaney of resisting law enforcement, the State was required to prove that he knowingly and forcibly resisted, obstructed, or interfered with Officer Sharp while

the officer was engaged in the performance of his official duties. I.C. § 35-44-3-3(a)(1). The record reveals that at the time of the encounter with Chaney, Officer Sharp was in uniform and identified himself as a police officer to Chaney. Officer Sharp instructed Chaney to put his hands on a podium, and instead of complying, Chaney walked away from the officer. When Officer Sharp put his hand on Chaney's wrist to direct him to stop walking away, Chaney forcibly pulled away and eventually violently resisted being handcuffed. This evidence suffices to support Chaney's conviction on this count. See Johnson v. State, 833 N.E.2d 516, 519 (Ind. Ct. App. 2005) (holding that defendant was properly convicted of resisting law enforcement based on evidence that he "stiffened up" and required the officers to use force to place him in a police vehicle).

Chaney directs our attention to his version of events, including the facts that he had visited the Wal-Mart store as part of a "long awaited blessing experience" and was violently attacked by Officer Sharp while looking for a specific brand of vitamin-enriched water that Chaney "correlated" with Jesus Christ. Tr. p. 43, 48-49. This amounts to a request that we reweigh the evidence and judge witness credibility—a practice in which we do not engage when evaluating the sufficiency of the evidence supporting a conviction.

III. Battery on a Law Enforcement Officer

To convict Chaney of battery on a law enforcement officer, the State was required to prove that he knowingly or intentionally touched Officer Sharp, who was engaged in the performance of his duties, in a rude, insolent, or angry manner. I.C. § 35-42-2-1(a)(1). Officer Sharp testified that when he attempted to apprehend Chaney, Chaney

began swinging his arms and struck the officer in the face several times, causing Officer Sharp pain, bending his glasses, and knocking him to the floor. This evidence is sufficient to support Chaney's conviction on this count, and Chaney's arguments to the contrary amount to impermissible request that we reweigh the evidence and judge witness credibility.

IV. Disorderly Conduct

To convict Chaney of disorderly conduct, the State was required to prove that he recklessly, knowingly, or intentionally made unreasonable noise and continued to do so after being asked to stop. I.C. § 35-45-1-3(a)(3). Officer Sharp testified that when he first came upon the scene, Chaney was "yelling at the top of his voice." Tr. p. 19. The volume accompanying Chaney's behavior was sufficient to cause a crowd of approximately forty people to form. Throughout the encounter, Chaney was speaking incoherently in a very loud voice. Ignoring Officer Sharp's repeated instructions to be quiet, Chaney kept shouting as he was being escorted from the store. Contrary to Chaney's arguments, it is irrelevant that he made unreasonable noise in a commercial venue, see Martin v. State, 499 N.E.2d 273, 274-75 (Ind. Ct. App. 1986) (affirming disorderly conduct conviction where defendant made unreasonable noise at a public pool), and that the State allegedly failed to prove that his noise actually bothered or disturbed anyone, see Brittain v. State, 565 N.E.2d 757, 761 (Ind. Ct. App. 1990) (holding that proof of a personal experience of distress, disturbance, or annoyance is not required to convict a defendant of disorderly conduct). We find the evidence sufficient to support Chaney's disorderly conduct conviction.

V. Public Intoxication

Finally, to prove Chaney guilty of public intoxication, the State was required to prove that he was in a public place in a state of intoxication caused by his use of alcohol or a controlled substance. I.C. § 7.1-5-1-3. Officer Sharp testified that he smelled the odor of an alcoholic beverage on Chaney's person and that throughout the encounter, Chaney's eyes were bloodshot and his speech was slurred and unintelligible. The officer testified that in his opinion, based on his experience, training, and observation of Chaney's behavior, Chaney was intoxicated. This evidence is sufficient to support Chaney's conviction for public intoxication. See Atkins v. State, 451 N.E.2d 55, 57 (Ind. Ct. App. 1983) (holding that evidence of intoxication was sufficient where the arresting officer testified that the defendant was unsteady on her feet, had an alcoholic odor about her breath and person, and was arrested due to her condition and actions at the scene, and that it was his opinion that she was intoxicated).

The judgment of the trial court is affirmed.

RILEY, J., and ROBB, J., concur.